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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,204	06/23/2006	Yuko Kubo	292762US0PCT	9114
22850 7590 12/12/2008 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER GWARTNEY, ELIZABETH A				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
12/12/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

## Office Action Summary

**Application No.**

10/584,204

**Applicant(s)**

KUBO ET AL.

**Examiner**

Elizabeth Gwartney

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/DE)  
Paper No(s)/Mail Date See Continuation Sheet
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

Continuation of Attachment(s) 3. Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :20080527;20080221;20071121;20070611;20060623.

## DETAILED ACTION

### *Specification*

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a *single paragraph* on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In the present case, the abstract is two paragraphs and should be limited to a single paragraph.

### *Claim Objections*

2. Claims 7-10 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). For the purpose of this office action claims 7-10 have been interpreted as depending from claim 1. Appropriate correction is required.

Claim 8 is objected to because of the following informalities:

The term "spinaches" appears to be a misspelling of the term "spinach" and the term "Brussels" appears to be a misspelling of the term "brussel". Appropriate correction is required.

The recitation "vegetable is at one vegetable" appears to include a typographical error. Does applicant mean "vegetable is at least one vegetable?"

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Devine et al. (US 5,234,704).

Regarding claims 1 and 4, Devine et al. disclose a liquid beverage composition (C3/L14-18), comprising about 1.00 % of solids derived from apple concentrate, about 0.1% to about 1.0% carrageenan and/or pectin, and water (C4/L35-61, C9-C10/Table 1).

Regarding claim 2, Devine et al. disclose all of the claim limitations as set forth above. Devine et al. also disclose that the beverage further comprises locust bean gum or guar gum (C4/L35-53).

Regarding claims 3 and 5, Devine et al. disclose a liquid beverage composition (C3/L14-18), comprising about 1.00% of solids derived from apple concentrate, about 0.1% to about 1.0% locust bean gum and/or guar gum and water (C4/L35-61, C9-C10/Table 1).

Regarding claim 6, Devine et al. disclose all of the claim limitations as set forth above. Further, Devine et al. disclose that the hydrocolloid (i.e. locust bean gum, guar gum, carrageenan and/or pectin) should be present in an amount of about 0.1% to about 1.0% wt % (C4/L54-61).

Regarding claim 7, Devine et al. disclose all of the claim limitations as set forth above and that the content of water is 78.43% (*see* remainder - C9-C10/Table 1).

Regarding claim 8, Devine et al. disclose all of the claim limitations as set forth above and that the vegetable is one vegetable selected from the group consisting of tomato, carrot, celery and spinach (C5/L53-54, 60-64).

Regarding claims 9-10, Devine et al. disclose all of the claim limitations as set forth above and that the liquid beverage composition has been subjected to an aseptic system, heated to 200°F (i.e. heat sterilization), packaged into clean clear glass bottles and capped (i.e. packaged drink) (C10/L56-58).

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Chalupa et al. (JP 10-502246) teach a pourable gelled beverage containing gellan gum. The reference does not teach a neutral polysaccharide.

- Hoersten et al. (US 4,988,530) teach a fruit juice based beverage comprising a combination of gum arabic and pectin. The reference does not teach a composition comprising water.

- Shirahata et al. (JP 2003 116496 A) teach a vegetable or fruit juice comprising a water soluble acidic polysaccharide, juice and flavoring. The reference does not teach a beverage composition comprising a neutral polysaccharide, water or solids derived from vegetable and/or fruit.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Gwartney whose telephone number is (571) 270-3874. The examiner can normally be reached on Monday - Thursday; 7:30AM - 5:00PM EST, working alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./  
Examiner, Art Unit 1794

/Callie E. Shosho/  
Supervisory Patent Examiner, Art Unit 1794